

or temporary use permit is the rental per acre from the current schedule multiplied by the number of acres embraced in the grant or permit, unless such rental is reduced or waived as provided in paragraph (b)(2) of this section.

(v) The authorized officer will use the linear rental schedule unless the authorized officer determines:

(A) A substantial segment or area within the right-of-way exceeds the zone(s) value by a factor of 10; and

(B) In the judgment of the authorized officer, the expected valuation is sufficient to warrant a separate appraisal.

Once the rental for a right-of-way grant has been determined by use of the rental schedule, the provisions of this subparagraph shall not be used as a basis for removing it from the schedule.

(2)(i) Existing linear right-of-way grants and temporary use permits may be made subject to the schedule provided by this paragraph upon reasonable notice to the holder.

(ii) Where the new annual rental for linear rights-of-way exceeds \$100 and is more than a 100 percent increase over the current rental, the amount of increase in excess of the 100 percent increase shall be phased in by equal increments, plus the annual adjustment, over a 3 year period.

(d) The annual rental payment for communication uses listed in paragraph (d)(1) of this section is based on rental payment schedules. The rental schedules apply to right-of-way holders and tenants authorized to operate and maintain communication facilities on public lands. They do not apply to holders who are public telecommunications service operators providing public television or radio broadcast services granted a waiver under § 2803.1-2(b)(2)(i). Nor do they apply to communication site uses, facilities, or devices located exclusively within the exterior boundaries of an oil and gas lease and directly associated with the operations of the oil and gas lease (subpart 2880).

(1) The schedules are applicable to communication uses that provide the following services:

(i) Television broadcast includes right-of-way holders that operate FCC-

licensed facilities used to broadcast UHF and VHF audio and video signals for general public reception, and communication equipment directly related to the operation, maintenance, and monitoring of the use. This category does not include holders licensed by the FCC to operate Low Power Television (LPTV) or rebroadcast devices such as translators, or transmitting devices such as microwave relays serving broadcast translators.

(ii) AM and FM radio broadcast includes rights-of-way that contain FCC-licensed facilities primarily used to broadcast amplitude modulation (AM) or frequency modulation (FM) audio signals for general public reception, and communication equipment directly related to the operation, maintenance, and monitoring of the use. This category is not applicable to holders licensed by the FCC as a low-power FM radio. This category also does not include rebroadcast devices such as translators, boosters, or microwave relays serving broadcast translators.

(iii) The broadcast translator and low power television category includes FCC-licensed translators and low power television, low power FM radio, and communication equipment directly related to the operation, maintenance, or monitoring of the use. Microwave facilities used in conjunction with LPTV and broadcast translators are included in this category.

(iv) Cable television includes FCC-licensed facilities that transmit video programming to multiple subscribers in a community over a wired or wireless network, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This category does not include rebroadcast devices that retransmit television signals of one or more television broadcast stations, personal or internal antenna systems such as private systems serving hotels or residences.

(v) Commercial mobile radio service/facility manager includes FCC-licensed commercial mobile radio facilities or their holders providing mobile communication service to individual customers, and communication equipment directly related to the operation, maintenance, or monitoring of the use. Such

services generally include two-way voice and paging services such as community repeaters, trunked radio (specialized mobile radio), two-way radio dispatch, public switched network (telephone/data) interconnect service, microwave communications link equipment. Some holders in this category may not hold FCC licenses or operate communication equipment, but may lease building, tower, and related facility space to a variety of tenants as a part of their business enterprise, and may act as facility managers.

(vi) Private Mobile Radio includes FCC-licensed private mobile radio systems primarily used by a single entity for mobile internal communications, and communication equipment directly related to the operation, maintenance, or monitoring of the use. This use is not sold and is exclusively limited to the user in support of business, community activities, or other organizational communication needs. Services generally include private local radio dispatch, private paging services, and ancillary microwave communications equipment for the control of the mobile facilities.

(vii) Cellular telephone includes FCC-licensed systems and related technologies used for mobile communications using a combination of radio and telephone switching technology, and providing public switched network services to fixed and mobile users within a defined geographic area. The system consists of cell sites containing transmitting and receiving antennas, cellular base station radio, telephone equipment, and often microwave communications link equipment, and communication equipment directly related to the maintenance and monitoring of the use.

(viii) Microwave includes FCC-licensed facilities used for long-line intrastate and interstate public telephone, television, information, and data transmissions, or used by pipeline and power companies, railroads, and land resource management companies in support of the holder's primary business. Also included is communication equipment directly related to the operation, maintenance, or monitoring of the use.

(ix) Other communication uses include holders of FCC-licensed private communication uses such as amateur radio, personal/private receive-only antennas, passive reflectors, natural resource and environmental monitoring equipment, and other small, low-power devices used to monitor or control remote activities.

(2)(i) The rental schedules will be adjusted annually based on the U.S. Department of Labor Consumer Price Index for All Urban Consumers (CPI-U, U.S. City Average, published in July of each year), and Annually Metro Area population rankings. Annual adjustments based on the CPI-U will be limited to no more than 5 percent. The rental schedule will be reviewed for possible update no later than 10 years after December 13, 1995, and at least every 10 years thereafter, to ensure that the schedule reflects fair market value.

(ii) Rights-of-way may be reviewed on a case-by-case basis 10 years after issuance or beginning [10 years and 30 days after the date of publication], whichever is later, and no more often than every 5 years thereafter, on holder request, to determine whether rents are appropriate.

(3) Rent is based on the actual users in the facility. For a facility with a single user, the base rent is the schedule rent for the use. Base rent for authorizations that include more than one user will be based on the use in the facility with the highest rent as shown on the schedule. An additional amount will be assessed based on 25 percent of the schedule rent for all other users. (A facility manager is not considered a separate use for purposes of calculating the additional amount for tenants in the facility.)

(4) Increases in base rental payments over 1996 levels in excess of \$1,000 will be phased in over a 5-year period. In 1997, the rental payment will be the 1996 rental, plus \$1,000. The amount exceeding \$1,000 will be divided into 4 equal installments, and beginning in 1998 the installment, plus the annual adjustment in the total rent, will be added to the previous year's rent.

(5) Annual rental payments will be calculated and provided to the holder